



***COMMONWEALTH of VIRGINIA***  
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**MEMORANDUM**

**TO: BRIAN MCCORMICK**  
Regulatory Coordinator  
Virginia Department of Medical Assistance Services

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: January 29, 2007**

**SUBJECT: Final Exempt Regulation to Incorporate DRA Mandated Treatment Foster Care Changes**

I have reviewed the attached final regulation to make changes to case management services to comply with the requirements of the Deficit Reduction Act of 2005 ("DRA"). You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the final regulations and if the final regulations comport with state and federal law.

It is this Office's view that DMAS has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Orders 21 (2002) and 58 (1999) and has not exceeded that authority. The DRA, section 6052, requires that case management services may not include direct services to clients and prohibits Medicaid reimbursement for case management services where a third party is liable for payment, including medical, social, educational, or other program services. Based on the foregoing, it is my view that the promulgation of these amendments is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(c).

Brian McCormick  
January 29, 2007  
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If you have any questions, please contact me at 786-4905.

Attachment

cc: Kim F. Piner, Esquire